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JURISDICTION OVER FOREIGN CORPORATIONS.

THE theories of the courts with regard to jurisdiction over foreign corporations have been modified by changes in the conditions to which they have been applied. The principle that a corporation cannot migrate, but must dwell in the place of its creation, was confronted by the fact that corporations did send their agents into other States and make contracts there, and it became necessary to decide whether such contracts were not void for want of power to make them, and also whether the foreign corporations could be sued upon such contracts in the courts of the State where they were made.

With respect to the former question the courts declared that although a corporation could have no legal existence out of the sovereignty by which it was created, and must be regarded as a person living there and there only, yet if it sent its agents into another State and made contracts there, its existence might be recognized by that State, and the contract, if not contrary to the laws of that State, would be a valid contract, and the corporation might bring a suit upon it there. Such was the decision of the Supreme Court of the United States in Bank of Augusta *v.* Earle,[1] in which the principle was maintained by Daniel Webster, in an elaborate argument, and affirmed in the opinion of Chief Justice Taney. The question was not whether the court of the

[1] 13 Peters, 519.

foreign State had jurisdiction, but whether the corporation had capacity to sue, and whether the contract had any validity. The decision was, that for the purposes of making contracts beyond the State of its creation, a corporation might be recognized by the comity of other States, and that if so recognized, it had power through its agents to make contracts in those States not contrary to their laws, and could bring an action on these contracts in such States.

The question whether a corporation may be sued outside of the State of its creation depends on different considerations. In order that a suit may be brought against it, it is necessary not only that its power to act through agents outside of the State of its creation should be recognized, but also that it should be found for the purpose of serving process within the State in which the action was brought. It is a principle of natural justice that a judgment cannot be rendered without giving an opportunity for defence, and that service of process within the State is necessary to give jurisdiction in an action *in personam*.[1]

At common law, service of process upon a corporation could be made only upon the head or principal officer of the corporation, and within the jurisdiction of the sovereignty which created it; and from this rule it followed of necessity that a valid judgment against it *in personam* could not be obtained in the courts of another jurisdiction. Even though a corporation might be recognized by the laws of other States, and might act there by agents and make contracts, and even bring suits there, yet it could not be found there for the purpose of being served with process, and the courts had not jurisdiction to entertain suits against it. Accordingly, we find the Supreme Court of New York in 1819 expressing the opinion that a foreign corporation cannot be sued in that State, for the reason that process must be served upon the head or principal officer of the corporation within the jurisdiction of the sovereignty where it was created. This opinion was cited with approval by the Supreme Court of Massachusetts in 1834,[2] and the Court said that all foreign corporations were without the jurisdiction of the Courts of that commonwealth. A similar opinion was expressed in New Hampshire in 1838,[3] and in Connecticut in 1841;[4] and

[1] Fisher *v.* Lane, 3 Wils. 297; Pennoyer *v.* Neff, 95 U. S. 734.

[2] Peckham *v.* North Parish in Haverhill, 16 Pick. 274.

[3] Libby *v.* Hodgeton, 9 N. H. 394.

[4] Middlebrook *v.* Springfield Fire Ins. Co., 14 Conn. 301.

in England Lord Blackburn said in 1872 that he was not aware of any reported case in which a foreign corporation had been sued in a court of law, and while he refused to set aside the service of a summons, he said the defendant might raise the question after appearing on the record.[1]

The idea that corporations cannot migrate had its origin in cases relating to municipal and ecclesiastical corporations in England, which were local in their character; and when the law of corporations was applied in this country to associations for the purposes of business, it was soon found that although in legal contemplation they dwelt in the place of their creation, they did in fact transact business in all parts of the country, and as more and more of the business of the country came to be transacted by corporations, it became evident that it was necessary that some theory should be devised by which they should be amenable to actions in the States in which their business was transacted. It was suggested, therefore, that they could not transact business there at all without the assent, express or implied, of the State to which they came; that being mere creatures of the law of another State, their existence need not be recognized at all, except under conditions; and it was competent for the legislature to declare that, if they came and transacted business, they should be considered as found there for the purpose of service of process in litigation arising out of business in which the company was so engaged.

The principle that, in order to jurisdiction in a suit *in personam*, the corporation must be found within the territory of the court in which the suit is brought is fundamental; but the rule that the process must be served upon the principal officer was a rule of practice founded only on the necessity of giving notice to a person who really represents the company, with respect to the subject-matter of the suit. When, therefore, companies sent their agents into foreign jurisdictions and transacted business there, it was competent for the government of those States or countries to declare that the agents sent for the purpose of transacting business did in fact represent the companies with respect to that business, and that the companies were in fact found there for the purposes of litigation arising out of that business. Such was the decision of the Supreme Court of the United States in 1855, in La Fayette Insurance Co. *v.* French;[2] and in 1882 the same court, in a later

[1] Newby *v.* Van Oppen, L. R. 7 Q. B. 293.

[2] 18 How. 404.

case,[1] declared that the principle of this decision applied to a case in which the condition was not express, but was merely implied by the fact that the State permitted foreign corporations to transact business within its borders, and at the same time provided that process in an action against such a corporation might be served on certain officers or agents found within its borders. The court said that since the corporation of one State sent agents into another, and opened offices and transacted business there, and was protected by its laws, it seemed right that it should be held responsible for obligations and liabilities there incurred. The officers and agents of a corporation, said Mr. Justice Field, "constitute all that is visible of its existence, and they may be authorized to act for it without as well as within the State. There would seem, therefore, to be no sound reason why, to the extent of their agency, they should not be equally deemed to represent it in the State for which they are respectively appointed when it is called to legal responsibility for their transactions."

In the case of La Fayette Insurance Company the action was brought upon a contract made within the State, and the service was made upon an agent appointed under the statute of Ohio, for the purpose of receiving service of process in an action on such a contract, and it was held that the court had jurisdiction. In the other case it did not appear that the corporation, which was organized in Illinois, had transacted any business in the State of Michigan, nor that the agent served with process was charged with any business of the company in that State, and the Supreme Court decided that the State court had no jurisdiction over the corporation, and that a judgment entered against it was invalid.

The result of these and other decisions on this subject is clearly stated by Mr. Justice Jackson (then Circuit Court Judge), in United States *v.* Bell Telephone Co.[2] He says: "We think the decisions of the Supreme Court have settled and established the proposition that, in the absence of a voluntary appearance, three conditions must concur and coexist in order to give the federal courts jurisdiction *in personam* over a corporation created without the territorial limits of the State in which the court is held. (1) It must appear as a matter of fact that the corporation is carrying on its business in such foreign State or district; (2) that such business is transacted or managed by some agent or officer appointed by

[1] St. Clair *v.* Cox, 106 U. S. 350.

[2] 29 Fed. Rep. 17.

and representing the corporation in such State; and (3) the existence of some local law making such corporation, or foreign corporations generally, amenable to suit there as a condition, express or implied, of doing business in the State."

Such are the conditions under which alone, in the opinion of the Supreme Court, jurisdiction may be obtained by the courts of one State over the corporations of another. There are some courts that assume jurisdiction in cases in which all these conditions are not fulfilled; but the doctrine of the Supreme Court is based upon sound legal principles and the considerations of justice, and is concurred in for the most part by the courts of the several States.

The question I wish to suggest is whether still another condition must not coexist with these three in certain cases in order that jurisdiction may be had over a foreign corporation. Must not the cause of action have some relation to the business which the corporation is transacting in the State, or to the scope of the agency of the persons by whom it is represented? Does the fact that a corporation transacts some business within the State make it subject to an action over a matter having no relation to that business? Or, does the fact that a corporation, being required by statute to do so as a condition of doing business, has appointed an agent to receive service of process in a certain State, make it amenable there to an action for a tort committed elsewhere? Does a corporation of one State or country, which, for the purpose of doing some little business in another jurisdiction, appoints an agent to receive service of process, make itself liable to an action there by anybody, or for any cause? Or, is the effect of appointing such agent only to make the corporation liable to be sued by citizens of the State on causes of action arising within the State, and out of the business done within the State? The question is obviously an important one, and is one which counsel are called upon to answer in advising corporations as to the effect of designating an agent to receive service of process, which is now required in so many States as a condition of doing business there. The subject has been discussed in recent cases, but there is a difference of opinion among the courts, and the question is not yet fully settled by judicial decision. In some States, and in one at least of the United States Circuit Courts of Appeals,[1] it has been held that by service of process upon an agent designated under the statute for that purpose,

[1] Johnston *v.* Insurance Co., 132 Mass. 422 (1882); Mooney *v.* Buford and George Mfg. Co., 34 U. S. App. 581; 72 Fed. Rep. 32 (1896).

jurisdiction is acquired over a foreign corporation even in suits by non-residents, and upon contracts made and to be performed outside of the State; and in other States it has been declared that, in the absence, at least, of express language to that effect, such statutes cannot be construed as requiring foreign corporations to submit to jurisdiction over causes of action arising outside of the State, and having no relation to any business transacted within the State;[1] and in one of these cases the court said: "To hold otherwise would be to allow foreign corporations which transact business in Alabama to be drawn into our courts for the adjudication of every contract and every tort and wrong they may be charged with committing, even in the State which gave them their being."

There are two classes of statutes relating to the service of process on foreign corporations. In one class it is merely provided that service of process on such corporations may be made on certain officers or agents within the State; in the other, it is declared, as a condition on which they are allowed to transact business within the State, that they shall designate a person on whom process may be served with like effect as if service of process had been made on the corporation within the State, or even with like effect as if made on a domestic corporation. In either class of cases there is no question but that if the corporation transacts business in the State, and an action arise out of this business, jurisdiction *in personam* may be acquired by service of process on such agent. It is equally well settled that under the statute of the former class, if the corporation transact no business in the State, jurisdiction cannot be acquired by serving process on an officer or agent casually within the State,[2] even though the local statute provide that process against a foreign corporation may be served on any officer or agent of the company within the State.[3] Such a statute, said Chief Justice Beasley, in the case just cited, does not give any new right of suit, nor does it purport to take away any of the privileges of foreign corporations. It simply appoints a method of bringing corporations invested with a foreign character into the courts of this State when such courts have jurisdiction over them. In such cases it is only when the agents represent the

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[1] Sawyer *v.* North Am. Life Ins. Co., 46 Vt. 697; Bawknight *v.* London L. & G. Ins. Co., 55 Ga. 194; Central R. R. Banking Co. *v.* Carr, 76 Ala. 388; 52 Am. Rep. 339.

[2] Moulin *v.* Trenton Insurance Co., 4 Zab. (N. J.) 222.

[3] Camden Rolling Mill Co. *v.* Swede Iron Co., 3 Vr. (N. J.) 15; St. Clair *v.* Cox, 106 U. S. 350; Goldey *v.* Morning News Co., 156 U. S. 518.

company in the transaction of business within the State that the company is considered as being found there for the purpose of receiving service of process.[1] The questions remaining unsettled are whether, if, under the former class of statutes, the company transact business within the State, and send agents there for that purpose, it can be sued there with respect to matters having no relation to that business; and whether, under the latter class of statutes, if a company designate a person to receive service of process, it can be sued whether it actually transact business in the State or not, or with respect to matters having no relation to the business it does transact there.

The fact that the cause of action arose outside of the territory does not of itself defeat the jurisdiction of the court. If the defendant be found within the reach of process, and the action be what is called transitory, the action may be maintained, and the judgment is good. It was only by a fiction that this result was obtained in the English law; but this was because of a rule of practice which required that the trial should be had before a jury of the neighborhood, and not because of an inherent lack of jurisdiction.[2] There are cases, however, in which the English courts and ours (and they are more liberal in this respect than those of the continent of Europe) will refuse to entertain actions against foreigners for causes arising abroad; and they will not enforce contracts illegal where they are made, nor treat as torts acts that are legal where committed.[3] The general rule, however, is that "where the action is *in personam*, whether in respect of a contract or of a tort, our courts will entertain it, though it may have arisen abroad, and though the parties to it may be aliens, provided that service of process be made according to their rules;"[4] and although the jurisdiction exists, it will not always be exercised, unless the circumstances are such that a refusal to entertain the action would be a denial of all remedy.[5]

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[1] Camden Rolling Mill Co. *v.* Swede Iron Co., 3 Vr. (N. J.) 15; St. Clair *v.* Cox, 106 U. S. 350; Goldey *v.* Morning News Co., 156 U. S. 518.

[2] Mostyn *v.* Fabrigas, Cowp. 161.

[3] Phillips *v.* Eyre, L. R. 1 Q. B. 1, 28; Doulson *v.* Matthews, 4 Term R. 503; Santos *v.* Illedge, 6 C. B. N. S. 841.

[4] 1 Smith's Ldg. Cas., 8th Am. ed., 1051–1068; Story, Conft. Laws, 542, 543; Whar ton's Conft. Laws, 744; Phill. Priv. Int. Law, 701; Buenos Ayres Ry. Co *v.* Northern Ry. Co., 2 Q. B. D. 210; Scott *v.* Lord Seymour, 1 H. & C. 219; LeForest *v.* Tolman, 117 Mass. 109.

[5] DeWitt *v.* Buchanan, 54 Barb. 31. In the case of The Belgenland, 114 U. S. 355, Mr. Justice Bradley refers to the elaborate arguments of counsel in the case of the

The objection, then, to entertaining jurisdiction over a foreign corporation for a cause of action arising abroad does not consist in the fact that there is no jurisdiction to determine the cause of action. The difficulty lies rather in the question whether the corporation is found within the territory for the purpose of answering to any such action. It has been held that, with respect to business done within the State or country, it is represented by the agents who transact the business, or agents especially appointed to receive service of process; but it does not follow that by this means it has brought itself within the jurisdiction of the courts with respect to all its transactions in the country of its creation, or in all parts of the world.

Judge Jackson, in the telephone case above referred to,[1] says that, where these conditions exist, and there is a local law authorizing the service of process on agents within the State, a foreign corporation is *found* within the State, and is liable to suit there in the State or Federal courts by service of process on the resident agent, and that the underlying principle of the decisions that he refers to is that the State may impose conditions on the transaction of business within the State by corporations chartered elsewhere. The decisions that he referred to were all rendered in cases in which the action had reference to the subject-matter of the agency or business within the State. It had been held that when a corporation sent agents into a State for the purposes of its business, there was no reason why, to the extent of their agency, they should not be deemed to represent it when called to a legal responsibility for their action.[2]

It was because the corporation had come into the State by its agents for the transaction of its business that it was held to be found there in the same agents for the purpose of being sued there with respect to that business; and the case in Ohio,[3] where an agent had been appointed under the statute, was a case in which the action was brought upon a contract made in Ohio, and

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San Francisco Vigilance Committee, Maloney *v.* Dows, 8 Abbott, Pr. 316, which he says contain an instructive analysis of the law upon the question whether and in what cases the courts of one country should take cognizance of controversies arising in a foreign country, or in places outside of the jurisdiction of any country. His own opinion in the case of The Belgenland is confined to an inquiry into the rule followed by the Courts of Admiralty.

[1] United States *v.* Bell Telephone Co., 29 Fed. Rep. 17

[2] St. Clair *v.* Cox, 106 U. S. 330, 355.

[3] La Fayette Ins. Co. *v.* French, 18 How. 404.

the condition under which the contract was made was that an agent should be appointed to accept service of process in a suit on such contract. And in this case Mr. Justice Curtis, while asserting the principle that the States might impose conditions upon the transaction of business by foreign corporations, said: "These conditions must not be inconsistent with those rules of public law which secure the jurisdiction and authority of each State from encroachment by all others, or that principle of natural justice which forbids condemnation without opportunity of defence." These cases, therefore, leave the question open whether a foreign corporation sending its representatives into a State for one purpose is found there in the person of these representatives for the purpose of being called to account in all causes of action; and also whether a corporation which, as a condition of doing business in a State, appoints an agent to receive a service of process there, can be said to be found there for the purpose of being sued for causes of action having no relation to the business done within the State.

It must be remembered that a foreign corporation exists by virtue of the laws of another sovereignty, and has no existence outside of the territory where it was created, except so far as its existence is recognized by the laws of other countries; and even though its existence be recognized there, it cannot exist there except so far as it acts there by its agents. It may by the leave, express or implied, of the other sovereignty establish a place of business there, and if it is recognized there, it is then found there for the purpose of its business, and may be regarded as found there for the purpose of being sued; but this is only because, by having sent its agents there subject to the conditions imposed by the local law, it has consented to be found there for the purpose of being sued.

Although it is well settled that a corporation, by establishing a place of business in another State, may be found there in the persons of its agents for the purpose of being sued with reference to that business, yet it has been repeatedly decided by the Supreme Court of the United States that even in such a case the residence of such a corporation is exclusively in the State of its creation, and it must be regarded as a citizen of that State alone;[1] and even though it be said that a corporation acquires a domicile where it

[1] Bank of Augusta *v.* Earle, 13 Pet. 519; La Fayette Ins. Co. *v.* French, 18 How. 404; Shaw *v.* Milling Co., 145 U. S. 444; Remers *v.* Seatco Mfg. Co., 70 Fed. Rep. 573–577.

establishes a business,[1] yet it is only by reason of its own act in establishing the business and by virtue of the local law which recognizes its existence there. The corporation remains a foreign corporation, and is subject to the laws of another sovereignty only so far as it has subjected itself to the laws of that country; and the inquiry must always be whether it has in fact subjected itself to those laws to such an extent as to be subject to the jurisdiction of its courts in the action which is brought against it.

"It is an elementary principle of jurisprudence," says Mr. Justice Gray, in a recent case in the Supreme Court of the United States,[2] "that a court of justice cannot acquire jurisdiction over the person of one who has no residence within its territorial jurisdiction, except by actual service within the jurisdiction of notice upon him, or upon some one authorized to accept service in his behalf, or by his waiver by general appearance, or otherwise, of the want of due service. Whatever effect a constructive service may be allowed in the courts of the same government, it cannot be recognized as valid by the courts of any other government." [3]

A foreign corporation, therefore, is not subject to the jurisdiction of the courts, except so far as by its acts within the State, or by its consent, or by its acceptance of conditions imposed, it has subjected itself to their jurisdiction. It must appear that it has come within the territory, and that its existence is recognized there, or it cannot be sued at all. If it has come for the transaction of certain business, then the agents which represent it in that business may be regarded as representing it for the purpose of being sued with reference to the business so intrusted to them; but it does not follow that they represent it for all purposes, or that the corporation may be regarded as found there for the purpose of being sued with reference to matters appertaining wholly to business transacted elsewhere. So also if a State require as a condition of a foreign corporation doing business within its borders that it appoint agents to accept service of process, the presumption is that only such jurisdiction is claimed as is necessary to deal with litigation arising out of the business that is done under this permission. Such a condition has relation to the permission given, and would be uni-

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[1] 6 Thomp., Corp., § 7998.

[2] Goldey *v.* Morning News, 156 U. S. 518.

[3] D'Avery *v.* Ketcham, 11 How. 165; Knowles *v.* Gas Light Co., 19 Wall. 58; Hall *v.* Lanning, 91 U. S. 160; Pennoyer *v.* Neff, 95 U. S. 714; York *v.* Texas, 137 U. S. 15; Wilson *v.* Seligman, 144 U. S. 41.

versally recognized as reasonable, and jurisdiction assumed by this means and for this purpose would not be regarded as a usurpation of power; but if a State should declare that no foreign corporation should send an agent for any purpose within its borders unless it should submit to jurisdiction over all suits against it arising out of its business in the country where it was organized, this might well be regarded as an unwarranted assumption of power which should not be recognized in the courts of other countries.

Whether this be so or not, it may be confidently asserted that the statutes by which the jurisdiction is assumed should be construed strictly, and should not, unless their language is explicit, be held to confer jurisdiction beyond that which is required to enable the courts to take cognizance of matters arising out of the business done within the State, or else to protect and enforce the rights of the residents of their own State against foreign corporations.

Applying this principle to those statutes which merely declare that process against a foreign corporation may be served on any officer, director, or other specified agent within the State, there would seem to be no doubt that they are not of themselves sufficient to confer jurisdiction over any causes of action having no relation to the business transacted within the State. It is well settled, as we have seen, that they confer no jurisdiction at all when the corporation does not come within the State for the transaction of any business.[1] Speaking of such a case Chief Justice Beasley said: "It would be difficult to believe that it was the design to place within the jurisdiction of our courts all the corporations of the world, merely from the fact that a director, clerk, or other subordinate officer happened to come within the territory."[2] Such a statute, he said, did not indicate an intent to amplify the jurisdiction of the courts over foreign corporations, but only to provide a mode of service in cases in which, under the principles of law, such jurisdiction existed. The principle is that if the agent comes within the State empowered to make or take contracts, the corporation may be regarded as representing it for the purpose of receiving process in actions arising out of those contracts, or out of the business done

[1] Moulin *v.* Trenton Ins. Co., 4 Zab. 222; Camden Rolling Mill Co. *v.* Swede Iron Co., 3 Vroom (N. J.), 15; St. Clair *v.* Cox, 106 U. S. 350; Phillips *v.* Library Co., 141 Pa. St. 462; Newell *v.* Gt. Western Ry. Co., 19 Mich. 336; Goldey *v.* Morning News Co, 156 U. S. 518.

[2] Camden Rolling Mill Co. *v.* Swede Iron Co., 3 Vroom, 15.

there.[1] It is not enough that officers or agents of the corporation are found and served with process within the State. They must be there in their capacity of representatives of the corporation in order that service upon them may be good service upon the corporation. It is only because the agents represent it within the State, and to the extent to which they do represent it, that the corporation is found there for the purpose of being served with process.[2]

The mere fact, therefore, that a corporation does some business in a State, and that the law makes provision for the service of process on the agents of a foreign corporation, will not make the corporation subject to be sued there upon causes of action having no relation to the business done within the State.

Such was the opinion of the Supreme Court of Georgia, the Supreme Court of Vermont, and the Supreme Court of Alabama in cases in which the question was fairly presented for decision. In Bawknight *v.* Liverpool & London & Globe Insurance Co.,[3] the court said: "We are not aware of any case which has decided that a foreign corporation may be sued *in personam* here on a foreign judgment, or on a contract or debt of any sort with which the Georgia agency has no connection, and it was held that an action could not be maintained in Georgia against an English corporation on a contract made outside of the State, and having no relation to the business done in Georgia, although the summons was served under the statute on an agent there." . . . "It would be strange if such were the law. A debt created in England by this English corporation could then be sued here; a debt made in China might be sued on *in personam* here when the corporation is allowed to live only for certain purposes, instead of being sued at home where it lives for all purposes."

In Sawyer *v.* North American Life Ins. Co.,[4] the Supreme Court of Vermont held that it had no jurisdiction over a suit by a non-resident against a foreign corporation on a contract made abroad, although process was served on an agent under a statute providing for such service.

In Central Railroad and Banking Co. *v.* Carr,[5] suit was brought in Alabama against a railroad company incorporated only in

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[1] 6 Thomp., Corp., §§ 7997, 8029; La Fayette Ins. Co. *v.* French, 18 How. 404; Smith *v.* Mut. Life Ins. Co., 14 Allen, 336; Nichols *v.* Green, 72 Iowa, 239.

[2] Mulhearn *v.* Press Publishing Co., 53 N. J. L. 150; 57 N. J. L. 388.

[3] 55 Ga. 194.

[4] 46 Vt. 697.

[5] 76 Ala. 388; 52 Am. Rep. 339.

Georgia, but doing business also in Alabama, having its line in both States. The plaintiff sued for personal injuries received while travelling in Georgia, and the summons was served on "a white person in the employ of the company," as authorized by statute. It was held by the Supreme Court of Alabama that the action could not be maintained. The court said that the service on such an agent would give jurisdiction of a cause of action which originated in one State, but that it is well settled that no action *in personam* can be maintained against a foreign corporation unless the contract sued on was made, or the injury complained of was suffered, in the State in which the action is brought.[1] The court said: "We cannot think that it was the intention of the legislature in any of the statutes we have been considering to allow foreign corporations to be sued in the State, except on causes of action originating in this State, or on contracts entered into with reference to a subject-matter within this State. To hold otherwise would be to allow foreign corporations which transact business in Alabama to be drawn into our courts for the adjudication of every contract and every tort and wrong they may be charged with committing, even in the State which gave them being."

The decisions in Massachusetts to the effect that suits may be maintained against foreign corporations for any cause of action, no matter where it originated, were cases in which an agent had been appointed to receive service of process under a statute requiring this to be done before any business can be done within the State, and this involves a different question, which will be discussed later. What is decided by the cases just cited is that the mere fact that there is an agent in the State on whom process may be served, and that the law authorizes the suit to be brought against a foreign corporation by means of the service of such process, does not give jurisdiction over suits arising outside of the territory and having no connection with the business done there.

There are circumstances, however, under which a corporation seems to make itself peculiarly subject to the laws of a foreign State or country. It is notorious that corporations organized for

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1 The court cited Bawknight *v.* Liverpool, etc. Ins. Co., 55 Ga. 194; Sawyer *v.* North American Life Ins. Co., 46 Vt. 697; Smith *v.* Mut. Life Ins. Co., 14 Allen, 386; St. Clair *v.* Fox, 106 U. S. 350; News Co. *v.* Great W. Ry. of Canada, 19 Mich. 336; Parks *v.* Com. Ins. Co, 44 Pa. St. 422; Camden Rolling Mill Co. *v.* Swede Iron Co., 32 N. J. L. 15; but these cases do not all go so far as to maintain this proposition.

the very purpose of transacting business in one State are often organized in another, and it has become a common practice for corporations to establish a head office in a foreign State or country, and to transact there a large portion or the whole of their business. In such cases it has been said that the company has established a domicile there, and made itself subject to all the laws of the State. Its residence or citizenship for the purpose of Federal jurisdiction remains in the State of its origin;[1] yet it may be fully represented for all business purposes by head officers and general agents, and in such a case, if the local law provides for service of process on such officers or agents, it may perhaps properly be held subject to general jurisdiction in actions *in personam*.

In Railroad Company *v.* Harris,[2] the Supreme Court of the United States said that it was possible for one State by its legislation to recognize the corporation of another, so as to make it for certain purposes a corporation of its own; and where a railroad company chartered in Maryland had been authorized to use its corporate franchises in the District of Columbia and Virginia, and to build a continuous line, and had head offices in Washington, it was held that it was subject to an action in the District for an injury happening in Virginia to a passenger who had bought his ticket in Washington. The court said it could not be supposed that the legislature had intended to give such privileges to the corporation without giving a remedy in the courts of the District for actions arising within the territory. The plaintiff in this case was not a resident of the District, but the contract on which he sued was made there.[3]

Lord St. Leonards, in Carron Iron Co. *v.* McLaren,[4] in his dissenting opinion, which has often been quoted with approval in American courts, said that jurisdiction to issue an injunction against a foreign corporation having an agent and place of business in England could be sustained, not on the ground of service upon the agent there, but because the company having houses and extensive business in England might be regarded as having a dom-

[1] Remers *v.* Seatco Mfg. Co., 70 Fed. Rep. 573–577; Shaw *v.* Milling Co., 145 U. S. 444; 6 Thomp., Corp., §§ 7997, 8029; La Fayette Ins. Co. *v.* French, 18 How. 404; Smith *v.* Mut. Life Ins. Co., 14 Allen, 336; Nichols *v.* Breen, 72 Iowa, 239.

[2] 12 Wall. 65.

[3] The court approved and followed B. & O. R. R. Co. *v.* Gallahue's Admr., 12 Gratt. 658; Gosham *v.* Supervisors, 1 W. Va. 308; B. & O. R. R. Co. *v.* Supervisors, 3 W. Va. 319.

[4] 5 H. L. Cas. 416–458.

icile there, so far at least as to give jurisdiction over transactions arising out of that business. "The corporation," he said, "cannot have the benefit of its place of business here without yielding to the persons with whom it deals a corresponding advantage."

In Newby *v.* Van Oppen and the Colt's Patent Fire Arms Co.,[1] it was held by the Queen's Bench that an American corporation, carrying on business in England, and having a general business office there, may be sued in an English court in respect to a cause of action arising there. The court said there had been no prior case at law, but that at least the service of summons should not be set aside.

This decision was followed and approved in the Court of Appeals in Haggin *v.* Comptoir D'Escompte,[2] and it was held that a French corporation which carried on an important part of its business in London, and had a banking house there, with head officers in charge of it, must be regarded as resident in London and subject to be sued there.

In that case the cause of action arose in England, but in an earlier case, before Vice-Chancellor Bacon,[3] the suit was brought by a firm in Belgium against a bank organized in China for damages relating to the custody of goods in Japan, and service of process on the officers in charge of the defendant's banking house in London was held to be good.

The difference, however, between such a corporation and one that has an office in the State only for limited purposes is pointed out in a later case in the Chancery Division, where it was held that the service of process on an application for an injunction against an American Land Co., with an office in London, should be set aside.[4]

In these English cases, however, as in many recent decisions in England, the question was not whether a judgment of general obligation could be obtained, but whether the proceedings were authorized by the rules of court having the force of acts of Parliament.[5]

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[1] L. R. 7 Q. B. 293.

[2] 23 Q. B. Div. 519.

[3] Lhoneux, Limon, & Co. *v.* Hong Kong & Shanghai Banking Co., 33 Ch. Div. 446.

[4] Badcock *v.* Cumberland Gap Park Co., 1893, 1 Ch. Div. 362.

[5] The judgment of Lord Westbury in Cooking *v.* Anderson, 1 D. J. & S. 365, was overruled in Drummond *v.* Drummond, L. R. 2 Ch. App. 32, and Lindley, J. said, the question was not what jurisdiction the legislature ought to assume, but whether the legislature of this country has, in fact, authorized process to be served

In Massachusetts, jurisdiction over foreign corporations was formerly given only in suits begun by attachment, and in such cases no question of jurisdiction *in rem* could arise; but in suits brought by garnishee process it has been held that a foreign corporation having its executive offices in Boston was amenable to such process as a corporation having a "usual place of business within the State," and the court said it must presume that a judgment would protect the company in case it were sued elsewhere on the same debt.[1]

Judge Lowell, in the United States Circuit Court in Massachusetts,[2] held that a suit might be maintained in the Federal court in that State against a foreign corporation without an attachment of property, and laid it down as a general proposition "that a trading corporation is of right suable in any country in which it conducts an important part of its business." The case, however, related to an infringement of a patent within the district.

None of these cases, except that of the Shanghai bank, goes so far as to decide directly that even in the case of an actual residence within the State, a foreign corporation would be amenable to suits by foreigners, or to suits having no relation to any business done within the State.

It may not always be easy to distinguish between cases of mere agency and cases in which there is established what is sometimes called a domicile within the State, and it is not necessary now to discuss the question whether a corporation can, in the proper sense of the word, have two domiciles;[3] but if a foreign corporation does in fact have its head offices within the State, transacts its general business, and is represented there by its officers and managers, and

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outside of the jurisdiction of the courts. If a decree should go against a person residing in a foreign country, it would be for the courts of that country to determine whether it should be enforced against him.

[1] National Bank of Commerce *v.* Huntington, 129 Mass. 444.

[2] Hayden *v.* Androscoggin Mills, 1 Fed. Rep. 93.

[3] This has been much discussed in cases relating to garnishee process, but jurisdiction may be sustained in such cases on the ground that the corporation is found for the purpose of being warned not to pay the debt, and that validity of the garnishment does not depend upon the location of the debt, or the domicile of the debtor. See Douglass *v.* Insurance Co., 138 N. Y. 209; Mooney *v.* Buford, 72 Fed. Rep. 32; National Insurance Co. *v.* Chambers, 53 N. J. Eq. 468; 32 Atl. Rep. 663; Myer *v.* Liverpool, etc. Ins. Co., 40 Md. 595; National Bank of Commerce *v.* Huntington, 126 Mass. 444. As to domicile for the purpose of jurisdiction, see Carron Iron Co. *v.* McLaren, 5 H. L. Cas. 416-449, 459; Nat. Fire Ins. Co. *v.* Chambers, 53 N. J. Eq. 468, 495; Dicey, Dom. 110, 112; 6 Thomp., Corp., §§ 7999, 8000.

if the laws authorize service upon it there, it may well be considered as having a domicile there for the purposes of jurisdiction; and there would seem to be no good reason why it should not be subject to be sued there for all purposes, and without regard to the origin or nature of the cause of action.

There are in some States statutes expressly defining the jurisdiction of the courts over foreign corporations. The Civil Code of New York,[1] which has been followed in many other States, provided that an action against a foreign correspondent might be brought (1) by a resident of the State for any cause of action, (2) by a plaintiff not a resident of the State, where the action is brought upon a contract made within the State, or the cause of action arose, or the subject-matter of the suit was situated, within the State. Under this provision it was held by the Court of Appeals of New York,[2] that a non-resident of the State could not maintain an action against a foreign corporation where the cause of action arose outside of the State, and no question was made in that case but that a resident might maintain a suit against such a corporation for any cause of action. It was said by Earl, J., that the distinction between the privileges of residents and non-residents in this respect was not unconstitutional; but the court was not called upon to decide upon the validity of a judgment recovered by a resident against a foreign corporation in a cause of action arising outside of the State.

Such a judgment would not be good unless the corporation had transacted business within the State, and process were served upon some officer or agent authorized to represent it there;[3] and if it were so served, the judgment would only be good on the principle that the statute of the State imposed this condition upon a foreign corporation doing business within its borders, and that the defendant, having come there by its agents, had by implication accepted this condition and so consented to the jurisdiction even over causes of action arising elsewhere. If the statute is explicit and the condition is distinctly imposed, it would seem that the corporation must be held to have submitted to the jurisdiction.

The same principle applies to cases arising under the statutes requiring the appointment of an agent to receive service of proc-

[1] Section 427.

[2] Robinson *v.* Oceanic Steam Nav. Co., 112 N. Y. 315; Palmer *v.* Phœnix Mut. Life Ins. Co., 84 N. Y. 63; 6 Thomp., Corp., § 8007.

[3] St. Clair *v.* Cox, 106 U. S. 350; Moulin *v.* Trenton Ins. Co., 24 N. J. L. 222.

ess. The appointment of the agent secures the presence of a person who represents the company, and if the statute expressly provides for service of process in any cause of action wherever arising, then if the company do transact business within the State, it may be taken to have consented to accept service of process in all actions which the courts of the State are competent to determine.

It has frequently been declared by the Federal as well as the State courts, that since a State has a right to exclude a foreign corporation altogether, it may impose conditions under which alone it may come within the State, and that if the corporation avails itself of the privilege, it must be taken to have accepted the conditions. This was the principle laid down by Mr. Justice Curtis in La Fayette Insurance Co. *v.* French,[1] in sustaining jurisdiction over a foreign corporation with respect to a contract made within the State, and he said such conditions must be deemed valid in other States, "if they were not inconsistent with those rules of public law which secure the jurisdiction and authority of each State from encroachment by all others, or that principle of natural justice which forbids condemnation without opportunity of defence." The Supreme Court has since then repeatedly decided that a State may impose such conditions as it pleases upon the doing of any business by a foreign corporation within its borders, and that unless the condition be complied with the prohibition is absolute; [2] and in Hooper *v.* California[3] Mr. Justice White says, "The principle that the right of a foreign corporation to engage in business within a State other than that of its creation depends solely upon the will of such other State, has long been settled, and many phases of its application have been illustrated by the decisions of this court," and he refers to La Fayette Insurance Co. *v.* French, and to many cases relating to franchises and taxes.

If, therefore, it be made an express condition of doing business within the State that a foreign corporation should submit to be sued there by any person for any cause of action arising anywhere, there would seem to be no doubt that on appointing an agent under such a statute, and so transacting business in pursuance of the leave so given, a foreign corporation would be taken to have consented to the condition, and that the service of the process would be good. The jurisdiction over the person of the

[1] 18 How. 404.

[2] Allgeyer *v.* Louisiana, 165 U. S. 578.

[3] 155 U. S. 648.

defendant would be established by the consent of the defendant to be regarded as found within the State in the person appointed as agent for that purpose, and the corporation would be subject to the judgment of the court over any cause of action of a transitory character without regard to the place where it actually arose. The condition may be unreasonable if it goes beyond any proper purpose, but it could hardly be considered as being in conflict with the principles of public law.

The question remains, however, whether the statute is so explicit as to be clearly intended to require a foreign corporation to submit to suits having no relation to the business done within the State, or to suits brought by persons that are citizens of the State where the corporation was organized or of some other foreign State.

With respect to actions transitory in their character, with which by common consent the court of any State is competent to deal, it is a question of the construction of the statute imposing the condition rather than a question of jurisdiction between States, and the decision of this question of construction depends a good deal upon the opinion of the court with regard to the policy and purpose of legislation of this character, and there is difference of opinion in the few cases in which the question is directly involved.

Judge Wheeler, in a case decided in Vermont in 1874,[1] expressed very strongly the opinion that a statute providing for the appointment of an agent on whom process might be served ought not to be construed as intended to permit a non-resident to sue a foreign corporation for a cause of action arising outside of the State. He said that even assuming that the agent in that case had been appointed in obedience to the statute, the question still remained, what cases the statute was intended to reach. A statute is to be construed with reference to the old law, the mischief, and the remedy. When this statute was passed the old law permitted the agents of any insurance company, foreign as well as domestic, to make contracts of insurance within the State under which causes of action would accrue to our own people within the jurisdiction of the State courts. The mischief was that the jurisdiction of the State courts over these causes of action would be unavailing except upon voluntary appearance, for want of power in the courts to compel appearance. The remedy provided was the requiring of

[1] Sawyer *v.* North American Life Ins. Co., 46 Vt. 697.

any foreign insurance company making such a contract to keep an agent in this State on whom service could be made. This would be a full remedy for all that mischief, without requiring such companies to keep an agent here on whom any process for any purpose could be served. There could be no advantage obtained for the people of the State by providing means to give the courts of the State jurisdiction over causes of action that accrued out of the State, in favor of persons not citizens of the State, against a corporation existing out of the State; and it is not to be presumed that the legislature intended to accomplish that purpose unless that is the necessary result of the enactment. It is more reasonable to suppose that the intention was to provide a method for obtaining jurisdiction over a defendant to a cause of action the courts had jurisdiction of before, than that it was to provide means for obtaining jurisdiction of a cause of action where none was had before, and of the parties also by the compulsory appointment of an agent; and he referred to Smith *v.* Ins. Co., 14 Allen, 336, and Camden Rolling Mill Co. *v.* Swede Iron Co., 3 Vr. 15.

On the other hand there are several more recent cases in which a different view is taken, and the statutes are construed as giving jurisdiction in suits brought by non-residents and over causes of action transitory in their nature arising outside of the territory.

In a case in Massachusetts in 1882,[1] a resident of Delaware brought suit against an insurance company organized in New Jersey and having an office in Boston, on a policy issued in Pennsylvania on property in Delaware, and summons was served on the insurance commissioner in Boston in pursuance of the statute. (Gen. Stats. 1878, ch. 36.) This decision was approved and followed in a recent case in the United States Court of Appeals for the Seventh Circuit.[2]

This was a case of garnishment proceedings, and it was held that the jurisdiction to attach a debt did not depend upon the question of the situs of the debt, but upon the control obtained over the debtor by means of process duly served, and that such service might be made upon the agent of a foreign corporation appointed under the statute, even though the debt arose out of a contract made and to be performed in another State.

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[1] Johnson *v.* Trade Ins. Co., 132 Mass. 432.

[2] Mooney *v.* Buford & George Mfg. Co., 72 Fed. Rep. 32; 34 U. S. App. 581.

The court said that it was notice to the debtor which gave the plaintiff in garnishment a lien upon the debt, and that if in the ordinary case of a foreign attachment a valid judgment could be rendered against a resident debtor, there was no reason why such a judgment should not be rendered against a foreign corporation which by law and its own consent had become subject to the service of process in the State where sued as if served with process there. The court referred to a recent case in New Jersey,[1] in which the same conclusion was reached. In that case the able argument of Vice-Chancellor Pitney is directed against the doctrine of the New York Court of Appeals in Douglass *v.* Insurance Co.[2] with regard to the jurisdiction over the debt in cases of foreign attachment, and he holds that it is service of notice upon the debtor and not the situs of the debt that gives jurisdiction, and he asserts that for the purpose of such notice and for the service of process a corporation may have two domiciles.

In a recent case in Mississippi,[3] it was declared to be well settled in that State that an action might be maintained by a non-resident against a foreign corporation for a tort arising outside of the State, and a demurrer to a plea to the jurisdiction in such a case was overruled. The decision was put upon the ground that the courts of the State were open to all suitors in all transitory actions against non-residents as well as residents, whether natural persons or artificial, provided only process were served or appearance were entered; and the court said that the question in the case before it was settled by the fact that a statute provided that foreign corporations should be liable to be sued or proceeded against by attachment or otherwise, as individual non-residents might be sued or proceeded against. The service in that case was made not upon an agent appointed to receive service of process, but upon the conductor of a railroad train, and the decision wholly ignores the question whether the corporation was in fact found within the State, or whether the conductor of a train could be held to represent the company with respect to an injury committed by another servant in another State. It is well settled in the Supreme Court of the United States and by the great weight of authority that service can only be made upon such agents as may

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[1] Nat. Fire Ins. Co. *v.* Chambers, 53 N. J. Eq.

[2] 138 N. Y. 209.

[3] Pullman Palace Car Co. *v.* Lawrence, Miss., May 24, 1897, 22 So. Rep. 53.

properly be deemed representatives of the corporation,[1] and the Supreme Court of Mississippi therefore has missed the real point on which the question of jurisdiction in such cases turns.

It is not the purpose of this article to attempt to reach definite conclusions. It must suffice to call attention to the principles and to refer to the judicial opinions on both sides, and it may be added that Mr. Thompson, in his work on Corporations, reaches the conclusion that although judicial opinion has not been uniform, yet the weight of authority is that, in the absence of statutes enlarging the jurisdiction of domestic tribunals, a foreign corporation cannot be sued for torts committed in a foreign State, and that the general rule, when not changed by statute, is that foreign corporations are suable in domestic tribunals only upon causes of action arising within the domestic jurisdiction.[2]

Whatever may be the true rule with respect to actions of tort and other merely transitory actions, there is no doubt that there are questions relating to a foreign corporation with which the courts of a State will refuse to deal. It is true, as was said by Wells, J., speaking for the Supreme Judicial Court of Massachusetts in 1867,[3] that the service of process on a foreign corporation can have no greater effect than a waiver of service, nor remove objections to the jurisdiction on the ground of the subject-matter of the controversy, nor obliterate the fact of the non-resident character of the defendant. While ordinary actions are transitory in their nature, there are, as he said, liabilities of local concern which the tribunals of other States will not enforce; as, for example, liabilities under the usury laws or penal statutes, or liabilities of a penal character of officers or directors of corporations for corporate debts;[4] and he held in that case that a court of equity would not entertain a bill brought by a citizen of Alabama, seeking to restore him to his rights under a policy of insurance in a mutual

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[1] St. Clair *v.* Cox, 106 U. S. 350–356; U. S. *v.* Telephone Co., 29 Fed. Rep. 17; Mulhearn *v.* Press Pub. Co., 53 N. J. L. 150. See Mackereth *v.* Glasgow, etc. Ry. Co., L. R. 8 Ex. 149, where the ticket agent of a foreign railway company was held not to be a head officer or clerk on whom process could be served in England.

[2] 6 Thomp., Corp., §§ 8007, 8008. See also 1 Rawle's Bouvier's Law Dict., p. 817, tit. "Foreign Corporation," where the authorities on this whole subject are collected.

[3] Smith *v.* Mutual Life Ins. Co., 14 Allen, 336.

[4] Gale *v.* Eastman, 7 Met. 14; Campbell *v.* Sheldon, 13 Pick. 8; Campbell *v.* Wallace, 10 Gray, 162; Halsey *v.* McLean, 12 Allen, 438; Derrickson *v.* Smith, 27 N. J. Law, 166. (The decision in Huntington *v.* Attrell, 146 U. S. 697, was that the liability was not of a penal character.)

company organized in New York. So also it has been held that a court of equity will not entertain a suit by stockholders to restrain or redress frauds or breaches of trust on the part of officers or directors of a foreign corporation,[1] and that even where there is a statute authorizing service of process, the courts have no visitatorial power over foreign corporations, nor jurisdiction to regulate their internal affairs.[2] Even though provision be made for the service of process upon foreign corporations, the Courts are left free to determine whether they will take jurisdiction of the subject-matter of the controversy or administer the relief which the case requires. The discussion of this subject involves questions of expediency and of power to enforce decrees as well as questions of jurisdiction, and these questions are not within the purposes of the present discussion.

Edward Quinton Keasbey.

NEWARK, N. J., March, 1898.

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[1] Thomp., Corp., §§ 4479, 8011; New Haven Horse Nail Co. *v.* Linden Spring Co., 142 Mass. 349; Wilkins *v.* Thorne, 60 Md. 253; Moore *v.* Silver Valley Min. Co., 104 N. C. 354; 10 S. E. Rep. 679–683.

[2] Mining Co. *v.* Field, 64 Md. 151; 20 Atl. Rep. 1039; Republican Mountain Silver Mines *v.* Brown, 58 Fed. Rep. 644; 7 C. C. A. 412.

On the question in what cases courts will exercise jurisdiction over causes of action arising in foreign countries, or beyond their own territories, see the notes to Mostyn *v.* Fabrigas, 1 Smith's Leading Cases, 652, and the opinion of Judge Bradley *In re* The Belgenland, 114 U. S. 355.